

### **REMARKS**

Claims 1-12 are currently pending in this application.

Claims 1-12 have been rejected under 35 U.S.C. § 103 as being unpatentable over Siekmeyer, U.S. Patent No. 5,846,196, in view of Avitall, U.S. Patent No. 5,702,438.

Independent claim 1, from which the rest of the claims depend, requires a first pair of struts that are directly and pivotally linked to one another at a first point, and a second pair of struts that are directly and pivotally linked to one another at a second point. Neither Siekmeyer nor Avitall alone teach these limitations, and neither does the combination of these two references. The Examiner noted that Siekmeyer does not teach a linkage assembly with a series of struts, and has relied on Avitall for teachings of these elements. In particular, the Examiner has taken the position that (with reference to Avitall's Figures 4-6) connecting element 38a, 38b, and 38c and the spines 32 and 34 that define a V shape are struts which are pivotally linked.

The connecting elements are taught to be "memoried or resilient" (Avitall, Col. 7, lines 18-19), and the splines forming the V shape are disclosed to be "memoried material such as nitinol ® or a spring biased material" (Avitall, col. 4, lines 53-54). From this text concerning the nature of the materials from which they are formed together with Avitall's drawings, it appears that the connecting elements and the splines are somehow bonded together or perhaps formed as a unitary structure from a memoried material. Avitall's teachings do not clearly teach that the connecting element pivot with respect to the splines. Given the nature of the disclosed materials and what the drawings show concerning the joining of the connecting elements and splines, it is possible that instead of pivoting, the connecting element instead undergoes a bending motion around a radius of curvature near the region where it meets a spline.

Claim 1 also requires a span having first and second ends that are fastened to the linkage assembly at the first point (where the first and second strut are pivotally linked) and the second point (where the second pair of struts is pivotally linked). Neither Siekmeyer nor Avitall alone teaches this claim requirement, and neither does the combination of these two references. Siekmeyer does not teach any point where struts are pivotally linked. There is no teaching in Avitall of fastening a span to a linkage assembly at a pivot point, and it is not at all clear whether it is even possible to fasten a span at the point where Avitall's connecting element and spline meet and still maintain the relative movement of the connecting element, spline and span, given what Avitall teaches about the structure where Avitall's connecting elements and splines meet.

For at least these reasons, independent claim 1, and claims 2-12 which depend therefrom, are not unpatentable over Siekmeyer in view of Avitall.

Dependent claim 5 requires a sheath (recited in claim 3 from which it depends) and also a locking mechanism. But the Examiner has pointed to the sheath 46 of Siekmeyer as being both elements: the sheath and also the locking mechanism (see Office Action, page 3, lines 2-5). The Examiner has also pointed to the sheath 18 of Avitall as being both a sheath and a locking mechanism (see Detailed Action, page 3, lines 18-21). Clearly, neither Siekmeyer nor Avitall teaches both a sheath and also a locking mechanism as a separate element from the sheath, as required by claim 5. It should also be noted that at page 4, first line of the last paragraph, the Detailed Action states that "Siekmeyer in view of Avitall discloses the claimed invention except for the removable sheath, the locking mechanism..." This appears to contradict previous statements made in the Detailed Action which are discussed above in this paragraph.

Dependent claim 10 recites a tether. At page 4, 2<sup>nd</sup> full paragraph, the Detailed Action cites Avitall's elements 38a or 38c and the corresponding element directly opposite elements 38a and 38c as a tether. But, these same elements of Avitall are cited by the Examiner as being a part of a series of struts directly pivotally linked to one another (see Detailed Action, page 3, lines 16-18) and have been applied by the Examiner to the recitation in claim 1 (from which claim 10 is dependent) of "a first pair of struts that are directly and pivotally linked to one another at a first point, and a second pair of struts that are directly and pivotally linked to one another at a second point."<sup>1</sup> The same element in a reference cannot be used as a teaching of two different elements in the claims. Clearly, the cited references alone or in combination do not teach the subject matter of claim 10.

At the paragraph which bridges pages 4 and 5 of the Detailed Action the Examiner states that it was well-known in the art that extendable leads use a removable sheath, a locking mechanism and a tether. Applicant interprets this statement as a reference to argument made previously in the Detailed Action concerning these elements and the cited references. If this statement was instead intended a taking of Official Notice, then Applicant requests the Examiner clarify that this is what was intended.

For at least the reasons discussed above, claims 1-12 are not unpatentable over Siekmeyer in view of Avitall. Applicants traverse the rejections of the claims and respectfully request reconsideration and allowance of the claims in view of the arguments above.

The Examiner is requested to contact the undersigned by telephone at 425-867-4465 or by email at mary.y.redman@medtronic.com with any questions or

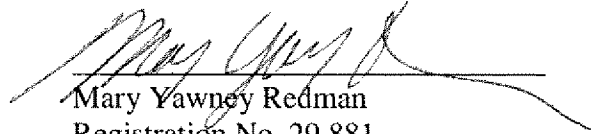
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<sup>1</sup> Applicant has taken issue with this application of these elements in Avitall to the claim language. See argument above.

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Respectfully submitted,

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Mary Yawney Redman  
Registration No. 29,881

MEDTRONIC, INC.  
710 Medtronic Parkway NE, M.S.: LC340  
Minneapolis, Minnesota 55432-5604  
Telephone: 425-867-4465  
Facsimile: 425-867-4142  
**CUSTOMER NO.: 27581**